Supreme Court, U.S.
FILED

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No.

IN THE
Supreme Court of the United States

IN RE PETITION OF S.J.H.,
ZAKARIA GABRALLA,
Petitioner,

v.

PETITIONER S.J.H. AND
DISTRICT OF COLUMBIA
SUPERIOR COURT FAMILY DIVISION,
Respondents.

On Petition for Writ of Certiorari
to the District of Columbia Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Is DC Code §16-304(e)(1999) which allows a court to waive parental consent where the Court views that consent is withheld contrary to the best interest of the child in violation of the Fourteenth Amendment to the U.S. Constitution where the Court ordered waiver is not subject to judicial review until the adoption proceeding in concluded where the waiver is substituted in an adoption proceeding consolidated with a neglect proceeding, and is used to terminate parental rights? Is §16-304(e) when used in this manner violative of the due process clause of the Fourteenth Amendment to the US Constitution?

II. In a neglect action commenced prior to an adoption proceeding where the adoption proceeding is later superimposed and consolidated with the neglect proceeding; should the termination of parental rights (TPR) rather than the waiver of parental consent that governs the severance of the parent-child relationship?

III. Whether the decisions of the DC Courts to terminate parental rights through waiver of consent in the adoption process (§16-304 et seq.) forbidding immediate appeal where other states with similar laws have determined that process to be lacking in due process safeguards?

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PARTIES TO THE PROCEEDING

The names of the parties to this proceeding are Zakaria Gabralla ("Z.G."), petitioner, who is the biological father of S.G., the subject of a neglect and adoption proceeding and Tyece Gray ("T.G."), who as the biological mother of S.G., is an interested party..

JURISDICTIONAL STATEMENT

Petitioner noted an appeal from the DC Superior Court's (Family Division) decision of October 4, 2000 to waive his consent to the adoption of his minor child S.G. on November 3, 2000. On March 30, 2001, the DC Court of Appeals dismissed the appeal as having been taken from a non final Order. The Court on May 3, 2001, denied petitioner's Motion For Reconsideration of said Order and issued a Memorandum opinion. On April 27, 2001 the DC Superior Court in the neglect case (the neglect case is consolidated with the adoption proceedings) entered an Order dispensing with the need to issue a Termination of Parental Rights Order (TPR) for Z.G. and T.G. in light of the waiver of consent in the adoptions case. On May 1, 2001 the DC Superior Court (Adoptions Judge) denied Z.G.'s Motion to re-instate visitation rights (which he asserted

continuously).

On May 11, 2001, Z.G., noted appeals of these decisions to the DC Court of Appeals and the DC Court of Appeals dismissed the appeals on May 16, 2001, *sua sponte* pursuant to its opinion in *In re Petition of S.J.H., Z.G. Appellant,* 772 A. 2d 247 (DC 2001).

Jurisdiction is invoked upon this Court as set forth in Article III, Section 2, Clause 2 of the United States Constitution which states:

> "In all other cases before mentioned the Supreme Court *shall have appellate jurisdiction* both as to the Law and Fact ..."

The Fifth Amendment to the U.S. Constitution:

> "No person shall ... be deprived of life, liberty, or property without due process of law."

The Fourteenth Amendment to the US Constitution:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Jurisdiction of the United States Supreme Court is also invoked pursuant to 28 U.S.C.A §1257(a).

STATEMENT OF THE CASE

On March 16, 2000, the DC Superior Court consolidated the neglect proceedings in this case which involved S.G., the fourteen month old daughter of Z.G., and T.G., with an adoption proceeding filed by S.G.'s foster mother S.J.H[1] The Court on March 16, 2000 also issued a

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[1] The DC Superior Court pursuant to D.C. Code §16-2301 et seq determined S.G., to be a neglected child in proceedings commenced on or about March 4, 1998, when S.G., was found with her maternal grandmother panhandling on the streets in the District of Columbia around 1:00 a.m. S.G. was subsequently placed in protective custody in the District of Columbia. S.G. was in actual custody of Z.G. with whom she lived since birth. On or about March 3, 1998, S.G's maternal grandmother visited Z.G.'s home and took the child from the home without Z.G.'s consent, and carried her to the District of Columbia. Z.G. lives in Maryland and was living there at the time of the abduction.

The DC Superior Court relying on a stipulation by S.G.'s biological mother, T.G. determined S.G. to be a neglected child. In 1999, approximately one year after S.G. was placed in her foster mother's care, S.J.H., filed a petition to adopt S.G. T.G. who is not married to Z.G. did not reside with Z.G. and later submitted an affidavit to the effect that the father, Z.G. had continuous custody of his minor child immediately after she was born. The DC Superior Court (Neglect Branch) on or about September 24, 2001, amended the record in this case to reflect the fact that S.G. was in the custody (illegal) of her maternal grandmother when she was

show cause Order to Z.G., and T.G., to appear before the Adoptions Judge to show cause why the Court should not waive or dispense with the biological parents' consent.

On October 4, 2000, the Adoptions Judge in the family Division of the D.C. Superior Court waived Z.G.'s and T.G.'s parental consents to the adoption and ordered the adoption finalized following a show cause hearing held on August 14, 2000. Pursuant to that Order of October 4, 2000 the Judge in the neglect case terminated Z.G.'s visitation rights on or about October 25, 2000.

On or about November 3, 2000 Z.G. and .T.G. noted Appeals from the Order of October 4, 2000 waiving their consent to the adoption of their daughter, S.G. The DC Court of Appeals dismissed both appeals and dismissed Z.G.'s Motion for Stay on 30 March, 2001, the appeals having been taken from a non final Order. The D.C. Court of Appeals also

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placed in protective custody. When the child was first discovered in DC, the court refused to return the child to her father in Maryland, but instead instituted supervised visitation, for Z.G. S.J.H, petitioned the court for adoption as soon as DC statutory law allowed, and the cases were consolidated. On August 14, 2001, the Adoptions Judge entered a final Adoption Decree. Z.G. noted an appeal on August 14, 2001, which is pending.

denied Z.G.'s Motion for Reconsideration of the Order Dismissing the Appeal on May 3, 2001 and issued an opinion explaining its decision. *In re Petition of S.J.(sic S.J.H.) Z.G., Appellant* 772 A.2d 247 (DC 2001).

On April 9, 2001, and April 27, 2001 Permanency Review hearings took place before the Neglect Judge. The Judge waived the need for a TPR pursuant to the waiver of consent Order issued in the adoptions proceedings. The Neglect Judge ruled that it was in the best interests of S.G., to be adopted by her foster mother (S.J.H.).

On May 11, 2001, Z.G. noted an appeal to the DC Court of Appeals from the Order entered on May 1, 2001 in the adoption case (DC Superior Court No. A-392-99) denying petitioner's motion to re-instate his visitation rights and from the Order entered in the neglect case (DC Superior Court case No. N-327-98) entered on April 27, 2001, vitiating the requirements of a TPR in those proceedings because Z.G.'s consent had already been waived by the Adoptions Judge in the adoption case.

The DC Court of Appeals dismissed those appeals captioned IN RE: PETITION OF S.H.J., Z.G., Appellant, and IN RE: S.G., Z.G., Appellant, *sua sponte*, pursuant to its opinion and decision in In re *S.J. , Z.G. appellant, supra,* in this case, on May 16, 2001.

REASONS FOR GRANTING THE PETITION

A. DC Code § 16-304(e) Violates the Due Process Clause of the Fourteenth Amendment to the US Constitution when it is used as the Alternative to a TPR Order in a Neglect Proceeding Consolidated with an Adoption Proceeding.

Petitioner argues that the waiver of consent section of DC Code (§16-304(e)) which allows a court to waive and dispense with parental consent to the adoption violated his substantive due process rights, when it was utilized as a means to terminate his parental rights in an adoption proceeding that had been consolidated with the earlier neglect proceeding and the court in the neglect proceeding did not issue a TPR Order. This judicial procedure resulted in the termination of Z.G.'s parental rights without his having the ability to take an appeal of the decision.

The Supreme Court has recognized that natural parents have a fundamental liberty interest in the care, custody, and management of their children and that this right is protected by *the Fourteenth Amendment to the United States Constitution. Santosky v. Kramer;* 455 U.S. 745, 760 (1982); *In re T.J.*, 666 A. 2d 1, (DC 1995); *Troxel et vir v. Granville, 530 US 57 (2000).* Similarly, the Court held in *Stanley v.*

their children are subject to the protections of the due process and equal protection clauses of the Fourteenth Amendment to the US Constitution. This Constitutional protection, although applicable to states through the Fourteenth Amendment, extends to the District of Columbia through the due process clause of the Fifth Amendment. *Orange v. Bd of Elections and Ethics,* 629 A. 2d 575, 579 (DC 1993), *Quilloin v. Walcott,* 434 U.S. 246, 255, (1978); *Stanley v. Illinois, supra, Bolling v. Sharpe,* 347, U.S. 497, 499, (1954).

The DC Court of Appeals has theoretically held that a termination of parental rights proceeding can occur either as part of an adoption proceeding or as a dispositional alternative in a neglect proceeding. D.C. Code §16-2320 (a) (6); *In re D.R. M., 570 A 2d 796, 804-05 (DC 1990); In the Matter of Baby Girl , D.S., 600 A. 2d 71 DC 1991; In re T.J., Supra.* Pursuant to DC Code §16-2323(b) (c) and 16-2353 et seq., the court may terminate the parent/child relationship on motion of a relevant party and when the court finds the evidence presented following due consideration to the interest of all parties, that the termination is in the best interest of the child (DC Code §16-2353(a)).Under this section, orders terminating the parent and child relationship are part of neglect proceedings and are appealable interlocutory orders. Thus, as a practical matter, a TPR Order that has been appealed stays

any adoption proceedings pending the resolution of the appeal *In re C.I.T.*, 369 A.2d 171, 173 (1977).

The primary purpose underlying the legislative intent of Title IV of the Prevention of Child Abuse and Neglect Act of 1977 which amended chapter 16 of the DC Code by adding Subchapter III, §§16-2351 - 2365 (1977), was to provide for termination of residual parental rights in a neglect proceeding to facilitate adoption due to the inadequacy of the "adoption proceeding route" *In re A.W., 569 A 2d 168 (DC 1990).* Thus, the amendment allowing the termination of parental rights in the neglect proceeding and not the adoption proceeding recognized the fact that residual parental rights stood as a substantial deterrent to adoption and forced adversary roles between natural parents and prospective adoptive parents.

In this situation, the purposes of TPR proceedings are to ensure the recognition and enforcement of the constitutional rights of all parties. Termination of parental rights is a drastic remedy, which should be ordered only upon a showing of clear necessity. In the instant case the neglect judge held that a TPR (although it was initially requested by the court for the Guardian-ad-litem (GAL) to file a motion for such) was not necessary because the adoptions court had already waived parental consent in the adoptions proceedings. This Ruling afforded Z.G. no protection of his constitutional due process

rights to immediately challenge the termination through the appellate process. He was left powerless to act until a year after the initial waiver.

In lieu of a proper appealable TPR Order in the neglect case, the DC Superior Court Adoption's Judge consolidated the neglect proceedings with the adoptions proceedings pursuant to DC Code §16-304(d) and (e) for an evidentiary show cause hearing to determine why consent to the adoption of S.G. should not be waived. DC Code §16-304(e) states in pertinent part:

> The Court may grant a petition for adoption without any of the consents specified in this section when the Court finds after a hearing that the consent or consents are withheld contrary to the best interest of the child.

The Order of March 16, 2000, entered in the adoption case stated in relevant part:

> The limited consolidation promotes judicial economy and would be in the best interest of the child for in, counsel for the parties would be performing the same function he or she would perform in representing a client in resisting a TPR motion to terminate the client's parental rights.[2]

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[2] Appellant Z.G. in fact was not represented by counsel at the evidentiary hearing in which the decision was made to waive his consent. Many aspects of the decision issued on October

The language of this Order supports the argument by Z.G. that the Court in the adoption case consolidated the two proceedings (adoption and neglect actions) for the sole purpose of consideration of termination of Z.G.'s (and T.G.'s) parental rights. Indeed following the entry of the Order waiving parental consent to the adoption on October 4, 2000, the Judge in the neglect case terminated petitioner's visitation rights.

The DC Court of Appeals dismissed Z.G.'s and T.G.'s appeals of this decision, ruling that an Order waiving a birth parent's consent to adoption is not a final order and may not be appealed prior to completion of an adoption proceeding. *In re Petition of S.J.H.;supra.* The DC Court of appeals denied Z.G.'s subsequent appeal from the denial of visitation rights and the ruling that a TPR was not required to terminate his parental rights in the neglect case; the appellate Court based its' ruling on its May 3, 2001 decision in *In re S.J.H. supra.*

Petitioner maintains that DC Code §16-304(e) when it is used as a means to terminate and impede parental rights in lieu of a TPR abridges substantive due process guarantees under the

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4, 2001 reflect the fact that he was without counsel, did not fully present his case and had serious problems with self representation (Z.G. a Sudanese, is not well versed in speaking the English language and requested assistance of an interpreter or of his wife, Eleanor, but was denied both).

Fourteenth and Fifth Amendments to the U.S. Constitution. The relevant Order, although entered following an evidentiary hearing and findings of fact and conclusions of law is considered a non final Order. It has the effect of terminating Z.G.'s constitutional right to have a say in the care, custody and control of his daughter and moreover it interferes with the substantive due process component that provides heightened protection against government interference with certain fundamental rights and liberties interest with respect to parental rights. *Washington v Glucksberg* 521 U.S. 702, 700 (1972) *quoted in Troxel v Granville, supra.*

Z.G. argues herein that an order waiving parental consent pursuant to 16-304(e) could and should be considered an appealable interlocutory order like a TPR Order to ensure due process protections since this Order, as mentioned previously, issued from a separate and distinct fact finding proceeding governed by statutory provisions requiring notice to the proper parties, following a decision on the merits. In essence this proceeding was identical in substance and procedure to those proceedings governing the TPR proceeding in the neglect case.

Based upon the above discussion, review of the DC Court of Appeals' Orders in this case is necessary because the waiver of consent Order was used as a dispositional alternative to a TPR order issued in a neglect proceeding, but unlike the TPR

it is not appealable. Petitioner maintains that the statute should either be strengthened to be comparable to a TPR where adoption and neglect cases are consolidated with respect to due process safeguards (appellate -review) or disallowed as a means to terminate parental rights.

This section of the DC Code with the present interpretation does not assure due process or equal protection of the laws guaranteed under the Fourteenth Amendment to the US Constitution. Z.G. submits that §16-304(e), as it has been applied in the instant case, to remove parental rights when a neglect case is pending, poses a serious abridgment of the privileges and immunities under Fourteenth and Fifth Amendment, and is therefore not a valid exercise of District's power and obligation to enforce the provisions of these Amendments.

Section 16-304 (e) raises the possibility of a violation of these Amendments as well as the enforcement clause under the Fourteenth Amendment. The Court held in *United States v. Bitty,* 208 US 393 (1908), that "while Congress has the undoubted power to give, withhold, and restrict the jurisdiction of the Courts other than the Supreme Court, it must not so exercise that power as to deprive any person of life, liberty or property without due process of law. See also *Stanley v. Illinois, supra; Santosky v. Kramer, supra* (enforcement of the

Fourteenth Amendment for parental rights).

Z.G. argues that §16-304(e) gives the court too much flexibility and does not guarantee due process protections of the individual parent under the Fourteenth (Fifth, for DC residents) Amendment. This section of the DC Code does not guarantee the enforcement powers of the District to protect the due process rights of parents vested in the provisions of the US Constitution.

B. The TPR Proceeding is Appropriate for considerations of Removing Residual Parental Rights to Facilitate Adoption.

Petitioner incorporates the entire argument in section A of this Petition for a Writ of Certiorari and references it herein.

Z.G. submits to this Court that the Adoptions Judge procedurally maneuvered the outcome of this case by deliberately superimposing the adoptions proceedings over the neglect proceedings; thus placing the adoption case and its statutory provisions in front of the neglect case and its would be TPR proceedings. The Adoptions Judge then went on to render a decision to waive the consent of the biological parents to the adoption case, which served to dispose of or negate the TPR proceeding in the neglect case, and the visitation rights of Z.G. and T.G. This aspect, (consolidation) was accomplished

although the neglect proceedings were instituted approximately one year before the adoption petition was filed by SG's foster mother, and during the period prior to the commencement of the adoption case, the neglect court did not seek a TPR.

In essence the decision by the Adoption Court to waive the consent of the natural parents served to dispose of the parental rights, *res judicata*, obliterating the need for a ruling in the neglect case (TPR) and abridging Z.G.'s rights to an appeal of the decision, because (as was the case here) the DC Court of Appeals views an order pursuant to DC Code §16-304(e) to be a non final order. Z.G. was thus without a legal remedy to avoid the adoption of his child and was forced to choose whether noting an appeal from the Adoption Decree would further harm S.G. Z.G. continues to seek the return of his child, and is greatly concerned about her separation from her family.

Z.G., submits that the adoption court acted arbitrarily and capriciously and abused its discretion in ordering the limited consolidation and termination of Z.G.'s parental rights by means of §16-304(e). *Jefferies v. Turkey Run Consolidated School District,* 492 F.2d 1,3(C.A.Ind) *Santosky et al v Kramer, Supra.* Petitioner also argues that the court's ruling violated his due process rights in the following manner:

(1) The facts of this case indicate that T.G., the biological mother of S.G., chose Z.G. as the person whom she wished to

have continued custody of her daughter pursuant to her rights under DC Code §16-2361(b); see *In re Baby Boy C.*, 630 A. 2d 670, 673 (DC 1993), *cert denied*, 513 U.S.(1994).

(2) When S.G.'s, foster mother S.J.H., became eligible to petition the court to adopt the child and filed the petition for adoption, the Adoptions Court consolidated the adoption proceedings with the neglect case (the adoptions proceedings was placed as the first case) and the neglect court abandoned its reunification efforts for father and child, but did not initiate any efforts to terminate the parental rights of Z.G. and T.G.

(3) Instead, the Adoption Court following a show cause hearing, issued Findings of Fact and Conclusions of Law Order which was replete with mistakes, inaccurate facts[3] and innuendo, then waived the parents' consents to the adoption and ordered the adoption to go forth.

(4) The Neglect Court stopped Z.G.'s visitation rights on the basis of this waiver of consent, which did not legally

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Z.G. is currently challenging that Order on appeal. He is seeking to have the record in this case corrected in the DC Superior Court, Family Division.

On August 30, 2001, the trial court in the neglect branch granted in part the motion to correct the record and denied in part the most relevant amendments to the record. On September 17, 2001 Z.G. sought an appeal of this Order, and the appeal is currently pending before the DC Court of Appeals on this issue.

terminate Z. G.'s rights; thus denying Z. G. any interaction with his child and denying his right to any appellate process until the adoption was finalized. The DC Court of Appeals upheld the lower court's decision, for want of jurisdiction.

Z.G. argues that the Court's actions violated his substantive due process rights and denied him the equal protection of the laws under the Fourteenth Amendment in that under the current Orders rendered by the appellate court, Z.G. is without legal redress from the termination of his parental rights. Moreover, the court based its neglect findings on the mother's stipulation and never entertained the fact that S.G. was not living with her mother T.G. and that the child was in the custody of Z.G. see *Stanley v. Illinois, supra.* Petitioner has been placed in a 'Catch-22' position, where he is an aggrieved party with no right to an appeal of the Order terminating his parental rights and where he cannot exercise his basic constitutionally protected rights to visitation and interaction with S.G. *Santosky v. Kramer, supra.*

The controlling nexus in cases of this kind in the District of Columbia must be the TPR procedures especially in neglect cases which fall under DC Codes §16-2320(a)(6), where an adoption case has been consolidated with the neglect case. Petitioner maintains that the DC Court used the waiver of consent section of the DC Code (§16-304 [e]) to terminate

Z.G.'s parental rights in a manner which also prevented him from challenging that termination before a third party was given the legal right to exercise complete custody over the child. In cases where removal of custody from natural parents is involved recognition of the constitutional rights of all parties must be enforced by the courts, and termination of parental rights should be ordered only upon a showing of clear necessity. *In re LL.*, 653 A. 2d 873, 882 (DC 1995); In re. *A.S.C.* 671 A. 2d 742, (DC 1996).

It flows from this reasoning that any order terminating parental rights upon a showing that it is in the best interests of the child, after giving due consideration to the interests of all parties, must be subject to appellate review by the clear and convincing evidence standard. *In re K.A.* 489 A.2d 492 (DC 1984) *In re A.S.* 643, A. 2d 345 (DC 1994) *In re M.M.M.*, 985, A.2d 180, 183 (DC 1984). Petitioner argues herein that the only means to ensure equal protection of the laws or to assure due process rights of parents whose children have been adjudicated neglected under DC Code §16-2301 is the TPR proceeding, irrespective of whether a third party wishes to adopt such a child or has filed an adoption petition.

DC Code §16-304 provides that parental consent may be waived and dispensed with by a court when a parent cannot be located, has abandoned the child, has failed to support the child

for at least six months, or has relinquished all rights to an agency. Petitioner contends that the provisions of §16-304 were not applicable to the situation in the case at bar. None of the specific parental (in)actions were present with ZG. Because the court became *parens patriae* in the neglect proceedings, (erroneously so because Z.G. and his daughter S.G. were Maryland residents and should not have been in the District's neglect system) well before the adoption petition was filed. Thus termination of Z.G.'s, parental rights rested with the Neglect Court.

Although pre-adoption proceedings pursuant to DC Code §16-304 et seq. where the consent of a parent(s) is required to adopt that parent's child may be used to waive consent in an adoption proceeding, it must not be considered the controlling authority to terminate parental rights, where a neglect case is involved. This section of the DC Code when used in this manner obliterates the legislative intent of the enactment of Title IV of the Prevention of Child Abuse and Neglect Act of 1977 which added Subchapter III, §§16-2351 through 2365 (1981) to provide for termination of residual parental rights in a neglect proceeding. See *In re A.W., supra.* This provision subjects the TPR proceedings held in the DC Courts to Constitutional oversight, and therefore appellate review. *In re Baby Boy C, supra. In re J. D. W.*, 711 A.2d 826 (2000).

Z.G. contends that TPR proceedings in a neglect case prior to the consideration of an adoption petition with its constitutional safeguards to the right to appellate review is the only legally sufficient means to ensure protection of the rights of the parents, the child and the parent/child relationship. If the DC Courts, especially the Court of Appeals, allows the termination of parental rights by a statute that does not permit appellate review of that Order then legislation should be enacted to make a waiver of consent order an appealable interlocutory order under D. C. Code §11-721(a)(2). It would ensure constitutional safeguards of the parties. Use of this section to terminate rights in neglect/adoption proceedings under §16-2301 et seq. should be abrogated by express legislative enactment.

Support for this contention is found in most of the waiver of consent sections of State Codes in the United States. In at least 41 states, the language of the waiver of consent to adoptions' statutes require at the minimum a termination of parental rights clause, prior to the grant and finalization of an adoption decree of a minor. In the states of New York (Dom. Rel §115-b), Oregon (§§109.314,109.322,109.324, 109.326), South Dakota (§25-6-4), Tennessee (§36-1-111), Kansas (§59-2136), Maryland, (Fam. Law §5-32),Massachusetts (Ch. 210.33), Louisiana (Ch. Code Art. 1245), Delaware (Title 13

§1103(a)) and the District of Columbia (§16-304), there is however, no language in any of these sections that expressly state that *inter alia* termination of parental rights is a requirement to adoption. The ratio of states including a TPR clause to states that do not is roughly 82% to 18% which strongly suggests that the State legislatures intended to provide some measure of due process protections in the waiver of consent laws in that a TPR order should be subject to judicial (appellate) review (see Appendix of Orders and Exhibits).

The essence of the substantive due process safeguards is the constitutional guarantee that individuals are protected from unreasonable and capricious actions. *Jeffries v. Turkey Run Consolidated School District, supra.* The Fourteenth Amendment to the U.S. Constitution provides the following applicable section:

> "Nor shall any state deprive any person of life liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Moreover, the Supreme Court has held in *Buckley v. Valeo,* 421, U. S. 1, 93 (1976) and in *Weinburger v. Wisenfield,* 420 U. S. 631, 638 n.2 (1975) that the equal protection analysis in the Fifth Amendment area as previously stated is the same as that under the Fourteenth Amendment which subjects the District of

Columbia to substantive due process guidelines found in these Amendments to the U.S. Constitution.

Petitioner contends that review of this case by Certiorari to the DC Court of Appeals by this Court is necessary and desirable at this point because this case is ripe for review and the right of a parent to rear his or her child is a fundamental basic right protected by the United States Constitution against State governmental encroachment.

III. The Decision of the DC Courts to Terminate Parental Rights through the waiver of consent in Adoption Proceedings not permitting appeals until the proceeding is completed is in conflict with practice in other jurisdictions.

The decision of the DC Court of Appeals to withhold review of the Order waiving Z.G.'s parental rights by dispensing with his and T.G.'s consent to the adoption on the basis that a waiver of consent is a non-appealable order and in not reversing the order in favor of the constitutionally protected TPR proceeding departs sharply from decisions rendered on similar issues in Florida and Oklahoma. In L.J.R. v. T.T. 739 So. 2d 1283(Fla. App. 1 Dist. 1999), Florida's First District Court of Appeals held than an unwed mother attempting to terminate the parental rights of her child was required to do so, pursuant to §39.461(1) of the Florida Statute governing

termination of parental rights and not the adoption law. Accordingly the appeals court reversed the circuit court's decision to utilize §63.042(2)(b) et seq. of the Florida Statute on the grounds that state adoption statute's termination provision did not contain the same Fourteenth amendment due process safeguards as the TPR statutes.

While this case involved a biological mother attempting to terminate her child's father's parental rights by adopting her own child and thus differs from the instant case in this regard, T.T.'s use of the waiver of consent section in the adoption law to circumvent the TPR process in order to avoid L.J.R.'s noting an appeal is on point with the case at bar. In ruling that the TPR process was the appropriate means to terminate the father's parental rights the court stated in pertinent part:

> Proceedings to terminate parental rights under chapter 39 differ from adoption proceedings in other respects . . .
>
> Parental rights can only be terminated under certain circumstances see §39.464, Fla. Stat. (1991) . . . Certain procedural safeguards also apply to termination proceedings: . . . The need for termination of parental rights must be established by clear and convincing evidence at an adjudicatory hearing. §39.467(1), Fla Stat. . . Any party involved in the proceeding who is affected by the order of the court may appeal to the appropriate district court of appeal. §39.413, Fla. Stat; (1991).

> Consequently, Florida law does not take the termination of parental rights lightly and provides adequate due process safeguards.

The court went on to state:

> "T.T. offers no good reason why L.J.R. and the parties' child should be deprived of these statutory protections here. see generally *Kingsley v Kingsley*,623So2d 780(FL5thDCA 1993)(finding it error (which the majority deemed harmless on the facts) to try a termination of parental rights case together with an adoption case).

Finally the Florida appellate court pointed out that even in adoption proceedings where children gain adoptive parents and parental rights of natural parents are severed, the Florida Supreme Court requires the trial court to apply heightened protection of due process rights through the termination of parental rights section of the Florida Statutes. It held that the Supreme Court of Florida requires clear and convincing proof be adduced to "terminate a parent's right in a natural child". In re *Adoption of Baby E.A.W.*, 658 So. 2d 961,967(Fla. 1999). Accord In re *R.W.*, 495 So.2d 133, 1135(Fla. 1995) also quoting *Santosky v. Kramer*, supra, see generally *Padgett v. Department of Health and Rehabilitative Serv*, 577 So. 2d 565, 571 (Fla., 1991), as quoted in *L.J.R v. T.T.*, supra.

In *Gilbertson v Gibertson*, 498 P. 2d 1381(Okl., 1972)

a similar case to *L.J.R. v. T.T. supra,* the Supreme Court of Oklahoma held that adoption proceedings do not provide a procedure for termination of parental rights. 10 O.S. 1971§60.01 seq. and therefore the father (R. Gilbertson) could not terminate the mother's parental rights through the adoption process. This case, like the Fl. case is similar to the case at bar in that both parties attempted to bypass the TPR process in an attempt to prevent the aggrieved natural parents from exercising due process rights to an appeal of the TPR.

The Oklahoma Supreme Court thus held that the Legislators did not contemplate the use of adoption proceedings for the sole purpose of terminating parental rights, the law provided a separate procedure for termination of parental rights.

Petitioner contends that review by certiorari on this questions is needed to force the District of Columbia Court of Appeal's to apply as a matter of law the heightened due process protections outlined in §16-2301 et seq (the termination of parental rights section of the DC Code).

CONCLUSION

In light of the arguments presented in this Petition for a Writ of Certiorari and in light of the discussion with respect to the substantive due process violations of DC Code §16-304 et seq., when used in the context of this case, Petitioner prays that this Court grant the Petition.

Respectfully submitted,

Karl W. Carter, Jr., Esquire
Counsel of Record
Lucy R. Edwards,
Counsel for Petitioner
3001 Georgia Ave NW
Washington, DC 20001
(202) 829-9601

DATED: DEC 26 2001

APPENDIX OF ORDERS

AND EXHIBITS

District of Columbia

Court of Appeals

Filed: Mar 30, 2001

No. 00-FS-1387

IN RE PETITION OF S.J.H.,

T.G.,

Appellant,

and

A392-99

No. 01-FS-91

IN RE PETITION OF S.J.H.,

Z.G.,

Appellant,

BEFORE: Farrell and Reid, Associate Judges, and Kern, Senior Judge

ORDER

On consideration of the motion of appellant T.G. to late file docketing statement, the lodged docketing statement, the motion of appellant Z.G. for leave to file docketing statement out of time, the lodged docketing statement, designation of record, and statement regarding transcript, and the emergency motion of appellant Z.G. for stay pending appeal, and it appearing that these appeals are taken from the same order, it is

ORDERED, *sua sponte*, that these appeals are hereby consolidated for all purposes. It is

FURTHER ORDERED that the motions for leave to late file docketing statements are granted, and the Clerk shall file the lodged documents. It is

FURTHER ORDERED that the motion of appellant Z.G. for stay is denied. It is

FURTHER ORDERED, *sua sponte*, that these appeals are hereby dismissed for lack of jurisdiction as having been taken from a nonfinal order. It is

FURTHER ORDERED that the mandate shall issue forthwith.

PER CURIAM

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 01-FS-91

IN RE PETITION OF S.J.H.,

Z.G., APPELLANT.

Appeal from the Superior Court of the
District of Columbia
(Hon. Zinora M. Mitchell-Rankin, Trial Judge)

(Filed May 3, 2001)

Before: FARRELL and REID, Associate Judges, and KERN, Senior Judge

PER CURIAM:

On March 30, 2001, we dismissed the appeal in this case for lack of jurisdiction. We now deny appellant's motion for reconsideration and issue this brief opinion explaining the reason for the dismissal.

S.J.H. has petitioned to adopt her four year old foster child, S.G. As part of that process, on October 4, 2000, following a hearing, the trial court waived the consent of the child's birth parents to the adoption after finding that the consent of both parents was being withheld contrary to the best interest of the child. D.C. Code § 16-304 (e) (1997). The birth parents each appealed that determination. In the meantime, it appears, the trial court terminated the visitation rights of the appellant-father,[4] but he took no appeal from that order.

Generally speaking, this court has jurisdiction only over final orders and judgments of the Superior Court. D.C. Code § 11-721 (a)(1) (1995). An order waiving a birth parent's consent to adoption is not a final order and may not be appealed until the adoption proceedings have been concluded. The reason is that only upon a final decree of adoption are the "rights and duties" of natural parents terminated. *See* D.C. Code § 16-312 (a) (2000 Supp.). Although an order terminating parental rights is immediately appealable, *see In*

---

[4] The record before us does not indicate whether or when the visitation rights of the mother were also terminated.

re. C.I.T., 369 A. 2d 171, 173 (D.C. 1977), no such order has been entered in this case.

Appellant argues that the order waiving consent should be appealable because the trial court later terminated his visitation rights. We recently recognized that, at least in some circumstances, a parent "who has been denied all contact with her child is not precluded from challenging that denial on appeal until her parental rights have been terminated or an order of adoption has been entered." *In re D.M.*, No. 98-FS-1546, slip op. At 9 (D.C. April 12, 2001). Whether appellant fits within those circumstances is something we need not decide, because, as indicated, he took no appeal from the order barring visitation. We likewise reject the argument that the order waiving consent is appealable under D.C. Code §11-721 (a) (2)(A) as an order in the nature of an injunction. The waiver of consent dispenses with the need for parental consent to the adoption, but it is not an injunction.

For these reasons, the motion for reconsideration of the order dismissing the appeal is

Denied.

District of Columbia

Court of Appeals

Filed: May 16, 2001

No. 00-FS-654

IN RE PETITION OF S.H.J.,

Z.G., **A392-00**

Appellant,

No 01-FS-655

IN RE: S.G.,

Z.G., **N327-98**

Appellant.

BEFORE: Terry and Glickman, Associate Judges, and Nebeker, Senior Judge

ORDER

On consideration of appellant's emergency motion for stay of adoption of minor child it is

ORDERED that the motion for stay is denied. It is

FURTHER ORDERED, sua sponte, that these appeals are hereby dismissed. See In re S.J.H. no. 01-FS-91 (May 3, 2001). It is

FURTHER ORDERED that the Clerk shall issue the mandates forthwith.

PER CURIAM

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY DIVISION
DOMESTIC RELATIONS BRANCH

EX PARTE	:
IN THE MATTER	:
OF THE PETITION OF	:
	:
S.J.H	:Adoption Case No. A-392-99
FOR THE ADOPTION OF	: ADOPTION CALENDAR
A MINOR CHILD	: JUDGE ZINORA M.
	: MITCHELL-RANKIN
	:
IN THE MATTER OF	:**LIMITED**
	:**CONSOLIDATION WITH**
SHARVIS GRAY	:Neglect Case No. N-327-'98
	:Social File # 209075
Respondent.	:
	:

ORDER OF LIMITED CONSOLIDATION AND ORDER TO SHOW CAUSE

Upon review of the court file, it appears that the issue of the birth parents' rights has not yet been resolved. The

birth mother of the child, **SHARVIS A.K.A. SHAWRA GRAY,** born on February 18, 1997 in Washington, D.C., is **TYECE ARMELLE GRAY.** The putative birth father has been identified as **ZACHARY YOUSIF GABRALLA.**

In order to ensure that the natural parents' rights are represented, the Court will *sua sponte* consolidate the underlying neglect case with the adoption case for the limited purpose of counsel representation. Limited consolidation of the adoption petition with the underlying neglect matter is appropriate for purposes of an evidentiary proceeding on the ORDER to SHOW CAUSE so that the natural parents are properly represented to protect their interests. This is also done to assure compliance with M.L.B. v. S.L.J., 117 S. Ct. 555, 567 (1996) in which the Supreme Court stated that when deprivation of parental status is at stake, counsel is sometimes part of the process that is due. Consolidation of these matters in no way affects the responsibilities of the Neglect Review Judge, and the CCAN voucher for services in opposing the ORDER to SHOW CAUSE shall be submitted to the TPR/Adoptions Judge.

Accordingly, it is this 16th day of March, 2000,

ORDER:

1.That A-392-'99 and N-327-'98, are **CONSOLIDATED FOR THE LIMITED PURPOSE** of a D.C. Code § 16-304 (d) and (e) show cause evidentiary hearing, and so that the natural parents are assured counsel representation in the Order to Show Cause proceeding and counsel can be compensated under CCAN, for in substance counsel would be performing the same function be or she would perform in representing a client in resisting a TPR motion to terminate the client's parental rights. Moreover, limited consolidation promotes judicial economy and would be in the best interest of the child.

2. That you, **TYECE ARMELLE GRAY,** be and are hereby required to appear before the Adoptions Judge on **Wednesday, May 3, 2000 at 2:30 p.m.** in Courtroom # 212 in the Main Building of the Superior Court of the District of Columbia, 500 Indiana Avenue, NW, or in such other courtroom in which the Judge may be sitting on that date, **TO SHOW CAUSE WHY THE COURT SHOULD NOT WAIVE OR DISPENSE WITH YOUR CONSENT** to this adoption, for failure to provide for this child in the six (6) months period immediately preceding the filing of the petition for adoption on September 17, 1999, under D.C. Code § 16-304 (d), or alternatively, on the grounds that you

are withholding your consent contrary to the best interest of the child, the Court having the authority to waive your consent under the provisions of D.C. Code § 16-304 (e). If there is evidence that you received a copy of this Order and you fail to appear, the Court may conclude that you have abandoned your interest in this child and waive your consent, ultimately terminating your parental rights in granting an adoption decree as to this child.

You will also be required to confirm under oath who the biological father of this child is and any knowledge you have as to the whereabouts of the biological father at this time. If there is evidence that you received this Order and you do not appear to court, an attachment could issue for a law enforcement officer to take you into custody and bring you before the Court and you could also face contempt of court proceedings.

3. **That you, ZAKARIA YOUSIF GABRALLA,** having been identified as the natural father of the child **SHARVIS A.K.A. SHAWRA GRAY,** are hereby required to appear before the adoption Judge on **Wednesday, May 3, 2000 at 2:30 p.m.** in courtroom # 212, the Main Building of the Superior Court of the District of Columbia, 500 Indiana Avenue, NW, or in such other courtroom in which the Judge may be sitting on that date, **TO SHOW CAUSE WHY**

YOUR CONSENT SHOULD NOT BE WAIVED AND DISPENSED WITH on the legal theory that you voluntarily have failed to provide support for this child within the six (6) month period which immediately preceded the filing of the Petition for Adoption on September 17, 1999, this under D.C. Code § 16-304 (d), or alternatively, that you are withholding your consent contrary to the best interests of this child, this under D.C. Code § 16-304 (e). Should you be personally served a copy of this Order to Show Cause and then fail to appear for the hearing, this is an additional factor the Court may consider in deciding whether to waive your consent to this proposed adoption.

The attorney representing you in this matter is Janice Moore. Her address is P.O. Box 3388, Silver Spring Maryland 20919. Her phone is (301) 595-1068.

4. That an Investigator / TPR Specialist endeavor to locate and serve personally the natural mother and the natural father, each with a copy of this Order to Show Cause, **and also with a copy of the "Notice of Pending Adoption Proceeding,"** and file an affidavit as to the endeavors and service, if accomplished, no later than May 2, 2000. The birth mother's last known address is 1309 C Street, SW., Washington, D.C. The birth father's last known address is 8810 Manahan Drive, Ellicott City, Maryland. A copy of this

Order to Show Cause **has not been mailed to them,** nor has the Notice been mailed to them to avoid forewarning them and reduce the possibility that they may evade direct service. Rather to assure actual notice and due process, the Court is requiring direct personal service on them. If a parent is served, the investigator shall promptly notify the assigned adoption social worker, who shall notify by telephone **counsel for the petitioner(s), if any, the GAL for the child and the parent's counsel, if any,** involved in the case that the parent has been served.

5. That the assigned adoption social worker shall be present at least fifteen (15) minutes ahead of the scheduled time to meet with a parent, should a parent arrive, to explain to the parent the options available as to the child, provided counsel, if any, representing that parent has given permission for that discussion. Further, the adoption worker shall have the appropriate forms for consent, relinquishment, and denial of paternity and also the agency file, in the event the adoption worker is called upon to give sworn answers to questions as to contacts the worker or any other social worker with the agency has had with a parent and the parent's statements and comments concerning plans for the child, provided the recorded information meets the requirements of the official records exception to the hearsay rule.

SO ORDERED.

/s/

ZINORA M. MITCHELL-RANKIN

Presiding Judge

Family Division

(Signed in Chambers)

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

FAMILY DIVISION

DOMESTIC RELATIONS BRANCH

EX PARTE	:
IN THE MATTER	:
OF THE PETITION ON	:
	:
S. H.-J.	:Adoption Case No. A-392-99
	:ADOPTION CALENDAR
FOR THE ADOPTION OF	:JUDGE ZINORA M.
A MINOR CHILD RANKIN	:MITCHELL-RANKIN

IN THE MATTER OF	:**LIMITED**
	:**CONSOLIDATION WITH**
SHARVIS GRAY	:Neglect Case No. N-327-'98
	:Social File # 209075
Respondent.	:

FINDING OF FACT AND

CONCLUSIONS OF LAW AND ORDER

This matter was before the Court on August 14, 2000,

pursuant to an Order to Show Cause to determine whether the Consents of the birth parents, Ms. Tyece Armelle Gray and Mr. Zakaria Gabralla, to the adoption of the subject minor child, Shawra H. Gray, also known as Sharvis Gray, who was born on February 18, 1997, should be waived pursuant to Title 16 of the District of Columbia Code, Section 304 (d) and/or (e), (1999 Repl.). The Petitioner and her attorney, Leslie Susskind, Esquire, the birth father, Mr. Gabralla, and the mother's attorney were present during the proceedings.

Procedural History:

The birth father's attorney, Mr. Tober, on the day of the hearing raised with the Court his desire to withdraw, having filed a motion in that regard a few days earlier. Mr. Tober advised that he had not been able to communicate with his client and had received no cooperation from him. When Mr. Gabralla arrived, over one (1) hour late, he advised that he did not wish the services of his current attorney, and asked for a continuance to secure new counsel. On May 3, 2000, when this case was previously scheduled, the Court granted the father's request for a continuance to secure new counsel, being dissatisfied with his then present counsel. The Court admonished Mr. Gabralla at that time that no further continuances would be granted for this purpose.

Earlier on the afternoon of August 14, 2000, Mr. Gabralla's paramour called chambers to advise that Mr. Gabralla was ill and in the nurse's station at the courthouse. Contact was made with the nurse's station and the clerk was advised that Mr. Gabralla was not there and that he had not been there on that day for any purpose. As a consequence, the Court decided to proceed with the hearing, since Mr. Gabralla had notice of the proceedings and his absence was unexplained.

Within this context Mr. Gabralla arrived in the courtroom one and a half hour late, did not offer any viable explanation for this delay, and commenced to request a continuance to secure a new attorney, as discussed above, which was denied. Mr. Gabralla, after having been unsuccessful in his effort to receive a continuance for that purpose then asked the Court for an interpreter. Mr. Gabralla is from the Sudan. He possesses a command of the English language both verbally and receptively. He had never made such a request of this Court, although he had previously appeared on May 3, 2000. Moreover, he had never made a request for an interpreter in the underlying neglect case. Indeed, the judge in the underlying neglect case had requested during those proceedings that if Mr. Gabralla wished an interpreter that she be so advised. No such request was ever made by Mr. Gabralla. The Court does not have on staff

Arabic speaking interpreters and must make a special request for the same with adequate notice. Since no request had been previously made and there appeared to the Court to be no need for the same given his command of the language, his request for an interpreter at approximately 3:45 p. m., when the proceeding was to start at 2:30 was denied.

Petitioner's counsel also raised with the Court a pending motion to compel, as a result of Mr. Gabralla's failure to respond to discovery in accordance with the Rules of this Court. During the referenced May 2000 proceeding, when the case was continued at Mr. Gabralla's request, the issue of discovery was raised and his new attorney asked for an additional period to complete the same. Discovery was extended and was to be completed by July 3, 2000. Mr. Tober advised the Court that he was unable to secure his client's cooperation in that regard, and as a consequence discovery had not been completed. Petitioner's counsel requested that the Court precluded Mr. Gabralla from presenting evidence to challenge the Petitioner's proof as a sanction, in accordance with the discovery filed and the Rules of this Court. The Court declined this request since the Petitioner announced ready to proceed, the case had been pending since March 2000, Mr. Gabralla was now proceeding pro se , and further delay was not in the best interest of the subject minor child. Within this context the evidentiary

proceedings commenced. The birth mother had reported to the courtroom prior to the commencement of the proceedings, but then left for undisclosed reasons. Her attorney, Madhavan Nair, Esquire, announced that the birth mother supported Mr. Gabralla's efforts to secure custody of the subject minor child.

The Court heard testimony from the Petitioner, Ms. Elena Terminiello, former social worker, Mr. Baah, former social worker on the case, Ms. Lynette Johnson, current social worker, and Ms. Tharkery Gabralla, the present wife of the birth father.

FINDINGS OF FACT

1. The subject minor child, S.G. is three (3) years old and was born on February 18, 1997.

2. She has been a part of the Child Welfare System since March 1998, when a petition was filed alleging neglect, pursuant to Title 16-2301(9)(C), (1999 Repl.).

3. On September 22, 1998, Ms. Tyece Gray, the birth mother, stipulated in the underlying neglect case, "that she had an alcohol and/or drug problem which renders her unable to discharge her parental responsibilities to and for the child".

4. The subject minor child, who had previously been placed in shelter care, and placed with the Petitioner in March

1998, was committed to the Department of Human Services, Child and Family Services Agency, on November 2, 1998. The subject minor child continued in her placement with the Petitioner.

5. The birth mother and the birth father are the parents of five (5) children, including the subject minor child. Parental rights have been terminated with regard to two (2) of these children and, these children were thereafter adopted. The remaining two (2) children are in the custody of the birth father and his current wife.

6. Pursuant to court order the birth mother and the birth father were to submit to Pretrial Services for drug testing. Neither complied. (See, Petitioner Exhibits 4-11)

7. Mr. Baah is a social worker who is employed by Child and Family Services. He was assigned to the case from March 4, 1998 until the spring of 1999. He testified that the birth parents visited the child approximately two (2) times during this period and their interaction with the subject minor child was minimal. He further testified that he observed the minor child and the Petitioner approximately six (6) times, and characterized their interaction as extremely positive and also advised that the minor child call the Petitioner "mama".

8. Responsibility for the case was reassigned to Ms. Elena Terminiello. She was assigned to the case for approximately one (1) year. During this period neither the

birth father nor the birth mother visited. However, in the fall of 1999, Mr. Gabralla did request visits. This request for visitation coincided with the Petitioner's filing of the subject petition on September 17, 1999. From October 1999 until the spring of 2000, there were approximately ten (10) visits between the father and the subject minor child. During this same period the birth mother visited once. According to Ms. Terminiello, the subject minor child was always reluctant to visit with the birth father, and as the child became older visitation posed a greater difficulty for her. The subject minor child would cling to the Petitioner and not want to visit. At the end of Ms. Terminiello's tenure in the case the subject minor child advised that she no longer wanted to visit with her father.

9. Ms. Terminiello observed a close and familiar bond between the subject minor child and the Petitioner, and found the Petitioner to be very responsive to the subject minor child's needs.

10. During this period neither birth parent complied with the drug testing orders issued by the underlying neglect judge.

11. Ms. Lynette Johnson, the present social worker, who is employed by For the Love of Children, testified that there have been no visits since the order-suspending visitation as a result of Mr. Gabralla's failure to comply with the drug

testing order. The Court, until Mr. Gabralla complied with the testing order, issued the order-suspending visitation, on May 18, 2000. Ms. Johnson has visited the Petitioner's home on several occasions and testified that the Petitioner's interaction with the minor child were very positive, and to be the product of a strong bond. Ms. Johnson also testified that the Petitioner's home provided a suitable environment for the subject minor child. According to Ms. Johnson, the Petitioner and the subject minor child interact with the type of closeness and familiarity of the same quality as a natural parent and child. The subject minor child considers the Petitioner to be her mother, since this home is the only real home that this child has ever known.

12. The petitioner testified that she met the subject minor child at the Little Blue House on April 13, 1998; the child's initial placement when brought into care.

13. The subject minor child was placed in her case in April 1998, and has remained in her care since that time.

14. Visitation between the subject minor child and the birth father was problematic, and the difficulty increased with the subject minor child's advancing age. The child would cry and cling when she had to go to visits. The Petitioner filed the subject petition on September 17, 1999. She is suitable to adopt, as the subject minor child is suitable to be adopted.

15. The subject minor child has fully integrated into

the Petitioner's home, and she is very much loved by the Petitioner.

16. Neither parent has provided any financial support toward the maintenance of the subject minor child at any time during her over two (2) year tenure in the Child Welfare System. This is so despite Mr. Gabralla being employed, his receipt of a salary from that employment, and his receipt of a monthly stipend from his relatives in the Sudan in the amount of $1,000.00. Mr. Gabralla did provide the subject minor child with a birthday cake and presents in 1998.

17. The substance abuse concerns which prompted the placement of the subject minor child in the Child Welfare System have not been addressed by the birth mother, in that she has consistently failed to drug test or otherwise to evidence any ability to assume parental responsibility for the subject minor child.

18. Mr. Gabrallla's refusal to comply with the drug testing order also gives rise to ongoing concerns regarding his sobriety.

19. Mrs. Gabralla testified that she and Mr. Gabralla had been together for several years, having recently married in April of this year. During the period of their relationship Mr. Gabralla has fathered five (5) children with Ms. Gray, two (2) of whom are in their custody. During this same period Mr. Gabralla's and Ms. Gray's parental rights have

been terminated, in 1995 and 1998, respectively, with regard to two (2) other children, T.G. And C.G.

20. Contrary to the testimony of the other witnesses in this case, Mrs. Gabralla testified that Mr. Gabralla and she consistently visited the subject minor child, and the interaction was good between them, and that the subject minor child enjoyed the visits with them and her siblings.

21. Mrs. Gabralla also testified that she and her husband want custody of the subject minor child, and are capable of providing for her needs. She testified that Mr. Gabralla is employed, receives a monthly stipend from his relatives in the Sudan and that she is a long-standing employee with John Hopkins Hospital as a respiratory employee.

22. Mrs. Gabralla also testified that the subject minor child lived with them for a short period prior to being removed by the child's maternal grandmother before being placed in the Child Welfare System.

23. Mrs. Gabralla did not express to the Court a plan with regard to the assumption of custody of the subject minor child or evidence any recognition that such a change of placement would be traumatic for the subject minor child. She did not testify as to the well being of the two (2) children that are living with she and Mr. Gabralla, except to indicate that they are doing well.

24. Mr. Gabralla, although asserting his desire for custody, has not evidenced throughout the subject minor child's tenure in the Child Welfare System the ability to assume parental responsibility for the subject minor child. His visitation was inconsistent and minimal until the Petitioner filed a Petition to Adopt, and only then did he begin to visit with a degree of regularity. Prior to that time he was content to allow the child to be cared for by the Child Welfare System. Mr. Gabralla has consistently refused to comply with court orders and to drug test. This simple requirement, if accomplished, could possibly have yielded him the outcome that he desires and prevented this little child from being in foster care during the majority of her young life. He has fathered five (5) children with the birth mother, Ms. Gray, and has failed to assume parental responsibility for three (3) of these children, two (2) of whom have been adopted.

CONCLUSIONS OF LAW:

Based upon the foregoing Findings of Fact, the Court concludes as a matter of law the following:

1. That the subject minor child has spent the majority of her young life in the care and custody of the Petitioner. At the age of three and one half (3½) years, she, like all children,

is in need of stability, continuity and consistency of care by a caretaker that is responsive to her needs and capable of providing the same.

2. That the child does not have special needs. She is healthy and is suitable to be adopted.

3. The Petitioner is healthy and is suitable to adopt the subject minor child.

4. That the subject minor child has fully integrated and adjusted into the Petitioner's home and is very much loved by the Petitioner.

5. That the birth mother has failed to maintain consistent contact with the subject minor child. The birth mother does not know this child, and the subject minor child does not know her. Thus, there is no quality of interaction or bond between them. The subject minor child views the Petitioner as her mother, since the Petitioner is the only stable and consistent caretaker that this child has ever known.

6. The substance abuse issues which brought the subject minor child into the Child Welfare System have not been abated by the birth mother, and she has consistently failed to comply with court ordered directives to drug test.

7. The birth mother has failed to provide support for the subject minor child during her tenure in foster care, and has utterly failed to evidence wither an intention or ability to assume parental responsibility for the subject minor child.

8. That her failure to appear for the subject proceedings is further indication of her abandonment of her parental interest in the subject minor child.

9. That her parental preference with regard to placement of the subject minor child with Mr. Gabralla, as announced by her attorney, shall not be accorded the usual substantial weight, since she chose to absent herself from the proceedings, had not otherwise entered a written declaration in that regard or otherwise made her position known to the Court in any cognizable way. Moreover, a parental preference, while typically accorded great weight, is not dispositive and must be viewed in the context of the best interest of the subject minor child. The subject minor child's best interest does not lie with placement with a birth father who the subject minor child barely knows, and whose conduct has been opportunistic and not consistent with a sincere commitment to assume parental responsibility for the subject minor child.

10. The birth father and birth mother have produced five (5) children. None of these children are within the care and custody of the birth mother; two (2) have been adopted after the birth parents' parental rights were terminated. While two (2) of the children are living with the birth father and his wife, their status at home and school, the nature and quality of their interactions with the birth father, or his parental role

and philosophy were all undisclosed. This Court, without viable information, cannot draw any conclusion or reasonable inference with regard to his ability to parent or readiness to assume parental responsibility for the subject minor child.

11. The birth father, despite income from employment and a monthly stipend from his relatives in the Sudan in the amount of $1,000.00, has never made any contributions toward the financial maintenance of the subject minor child.

12. The nature and quality of the interaction between the subject minor child and the birth father was described as appropriate; however, the evidence further indicates that the subject minor child was very reluctant to visit, and as she got older visitation became more emotionally problematic for her. The subject minor child, according to the evidence of record, would cling to the Petitioner and to Ms. Terminiello, the social worker, and further expressed her desire not to have visits with birth father.

13. With the exception of a few visits during a four (4) month period in 1998, the birth father and the birth mother essentially dropped off the face of the earth as far as the subject minor child was concerned. They did not contact her or visit her. During this period the subject minor child began to adjust to the Petitioner's home...., to bond and, to attach to the only consistent parent that the subject minor child has

ever known, the Petitioner. It was not until the Petitioner formalized her intentions by filing a petition did the birth father begin to request visitation, and to exercise visitation with any degree of regularity, However, visitation ceased in May 2000, as a result of the birth father's failure to comply with a court order to drug test. The evidence of record suggest that with the exception of a seven or eight month period during the entire tenure of the child in the Child Welfare System that the birth parents individually and collectively have not maintained consistent contact with the subject minor child. By September/ October 1999, when the birth father requested visitation according to the evidence of record, the bonds were already formed between the subject minor child and the Petitioner. Attachment between a parent and a child is not a haphazard occurrence. Attachment is the product of consistent and nurturing responses by a capable parent to the needs of a child over a period of time, which allows the child to develop a sense of security and well being. This kind of attachment cannot be turned on and off like an electric switch. Inconsistent visitation, such as has occurred in the subject case, has not facilitated the development of a bond or attachment between the subject minor child and her birth father or birth mother .

14. That neither birth parent, and more specifically the birth father, have demonstrated by their conduct an ability

to provide a safe environment for the subject minor child. The judge assigned to the underlying neglect case made two (2) requests of the birth father and the birth mother: that they be consistent in visitation, and that they drug tests and demonstrate a drug free existence. The birth parents have done neither. It is a reasonable inference from their defiance that drug usage continues to be present. Even when the father's visitation was suspended in May 2000, because he refused to comply with the court's orders and to drug test, Mr. Gabralla did not conduct himself as a parent whose highest priority was the placement of his daughter in his custody - he continued to refuse to comply. A reasonable inference from this conduct, since no appeal was taken from the suspension of visitation, was that a test would have revealed the presence of an illegal and controlled substance, an occurrence, which is inconsistent with safe parenting.

15. In addition to the above conduct, the evidence of record raises substantial questions concerning Mr. Gabralla's judgment and the stability of Mr. Gabrallla's current home environment. Mr. and Mrs. Gabralla have been living together for a number of years and have recently married in April 2000. During the period of their relationship, Mr. Gabralla has fathered five (5) children with Mr. Gray. In 1998, at the inception of the child's tenure in the Child Welfare System, Ms. Gray was a drug user, and a reasonable

inference from the record would indicated that she continues to abuse drugs. The objective measures of sobriety, consistent visitation and drug testing have not occurred in this case, and their absence provides a reliable indicator of the birth mother's continuing lifestyle.

16. This long-standing union between Mr. Gabralla and Ms. Gray has produced three (3) children who have been a part of the Child Welfare System. Two (2) of these children have already found permanent homes, which have not been provided by their birth parents. Two (2) of these children have been adopted and the parental rights of the birth parents were terminated to facilitate these adoptions. Mr. Gabralla's continued and intimate association with Ms. Gray gives rise to a substantial concern regarding his ability to exercise sound judgment, and his overall concern about the well-being of his children. Moreover, this scenario gives rise to substantial questions regarding the stability of his present home environment. The record is clear that notwithstanding Mrs. Gabralla's intimate involvement with Mr. Gabralla, she has not been able to positively influence his conduct with regard to this case, and his attendant refusal to comply with court directives. Finally, the existence of this longstanding and continued intimate relationship with Ms. Gray speaks to the potential for further contact between Ms. Gray and the subject minor child were she is to be placed with her father.

The evidence of record; however, clearly indicates that continued contact by the birth mother, for whom biology and no other conduct has conferred upon her the status of mother and parent, is not in the subject minor child's best interest.

17. That there was no evidence of a plan presented by Mr. Gabralla for the child's maintenance and care. There was no recognition, or even any consideration of record of the disruption and emotional turmoil, which would be caused to this child if a change of placement were effectuated. Beyond the single assertion of a possessory interest in the subject minor child, as if she were channel, there was nothing more- no insight or recognition of the emotional needs of this child. The evidence presented demonstrated that the subject minor child's continued placement with the Petitioner is in this child's best interest. Mr. Gabralla's tasks were simple - consistent visitation, drug testing and an attendant demonstration of a drug free lifestyle. Having failed to meet either requirement, his assertion of a right to custody does not find support in the record as consistent with the subject minor child's best interest.[1]

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[1]The Court recognizes that the subject minor child has siblings; however, the subject minor child has never lived with any of her siblings and has, therefore, not developed any attachment or bond of record with them. Two (2) of her siblings have previously been adopted. The two (2) siblings who resided with the birth father in the State of Maryland have

18. That the Petitioner has met her burden of demonstrating by clear and convincing evidence that the birth parents' consents should be waived. The minor child has adjusted to her home with the Petitioner: the Petitioner is her mother and comprises the only family unit that this child has ever known. The interaction between the Petitioner and the subject minor child is familiar and positive. The subject minor child's best interest dictates that the pending adoption be finalized, and that she be provided with the permanent home which the Petitioner has demonstrated an ability to provide.

ORDER

Accordingly, it is this 4th day of October 2000.

ORDERED, that the CONSENT OF THE BIRTH MOTHER, MS TYECE GRAY, TO THE ADOPTION OF THE SUBJECT MINOR CHILD, SHARVIS GRAY, who was born on February 18, 1997, BE AND HEREBY IS WAIVED AND DISPENSED WITH PURSUANT TO

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only had inconsistent contact with her and there is no evidence of record of any bond or attachment with them. While this Court does not minimize the importance of a sibling connection, where, as here, there is no evidence of any connection between the subject minor child and her siblings beyond biology, this factor cannot be dispositive on this issue of placement. This is particularly so where there is substantial evidence of emotional attachment between the child and the

THE AUTHORITY PROVIDED BY TITLE 16 OF THE DISTRICT OF COLUMBIA CODE, SECTION 304 (d) and (c), (1999 Repl.); and it is further

ORDERED that the CONSENT OF THE BIRTH FATHER, MR. ZAKARIA GABRALLA, TO THE ADOPTION OF THE SUBJECT MINOR CHILD, SHARVIS GRAY, who was born on February 18, 1997, BE AND HERE BY IS WAIVED AND DISPENSED WITH PURSUANT TO THE AUTHORITY PROVIDED BY TITLE 16 OF THE DISTRICT OF COLUMBIA CODE, SECTION 304(d) and (e), (1999 Repl.); and it is further

ORDERED, that the Agency shall finalize the adoption process and shall submit in Final Report and Recommendation to the court not later than November 21, 2000.

SO ORDERED.

Petitioner, and where there are substantial questions concerning the commitment and ability of the birth father to safely assume parental responsibility for the minor child.

/s/

ZINORA M. MITCHELL-RANKIN

Presiding Judge

Family Division

(Signed in Chambers)

CONSENT TO ADOPTION BY STATE

When Consent is not Needed

Alabama

§104-9, 10

Parent has abandoned the child; fails to respond to notice; has had rights terminated if found to be incompetent, has relinquished child to placing agency; alleged father signs affidavit denying paternity.

Alaska

§25-23.050

When a parent has abandoned the child, has failed to communicate with or support the child, whose rights have been terminated or been declared incompetent ; the child is 19 years or older.

Arizona

§8-106(B)

A parent has had rights terminated previously consented that agency place the child or the court determines a waiver to be in child's best interest §8-106.01(E) A punitive father who does not file claim of paternity waives right of notice

Arkansas

§9-9-207

A parent has deserted a child; failed to communicate or provide care or support, has relinquished rights or had them terminated, or has been declared incompetent.

California

Fam Code §8606

The parent has relinquished rights or had been terminated, or has deserted the child Fam. Code §8604 Parent willfully fails to contact or support the child for one year

Colorado

§§19-5-203;19-3-604

Parent's rights have been terminated due to parent's unfitness; parent has failed to make contact or provide support' child has been out of parent's home for one year.

Connecticut

§45a-717(f)-(g)

Parent's rights have been terminated; parent has abandoned the child, caused the child non-accidental injury or failed to maintain a relationship with the child for at least one year.

Delaware

Title 13 § 1103(a)

If the child has been abandoned; the parent is legally incompetent due to insanity or feeble -mindedness; or the parent is convicted of a felony where a child has been harmed; there is a history of neglect.

District of Columbia

§16-304

When a parent cannot be located, has abandoned the child, has failed to support the child for at least 6 months, or has relinquished all rights to an agency.

Florida

§63.0772

The parent abandons the child; parental rights have been terminated; the parent is mentally incompetent; a guardian or custodian is found to be withholding consent unreasonably.

Georgia

Dom. Rel. §19-8-10

The child has been abandoned and parent cannot be found; parent is insane or otherwise incapacitated; parent has failed to contact or support the child.

Hawaii

§578-2(c)

A parent has deserted the child for 90 days; has voluntarily surrendered care and custody to another for 2 years; has failed to support or contact the child for 1 year; whose rights have been terminated; or who has been declared mentally ill or retarded.

Idaho

§16-1504,2005

A parent's rights have been terminated. The parent has abused, neglected or abandoned the child; has a mental illness or deficiency; caused the child to be conceived as a result of rape or incest; has killed child's other parent; is not the natural parent.

Illinois

750 ILCS 50/9

The parent is found to be an unfit person; not to be the biological or adoptive father of the child; or to have waived his parental rights; caused the child to be conceived as a result of sexual abuse.

Indiana

§§31-19-9-8 to 10

Parent has abandoned or failed to contact or support child for 1 year; a biological father who has not established paternity or whose child was conceived as a result of rape or incest; a parent whose rights have been relinquished or terminated, or is found incompetent; who has been convicted of murder or manslaughter and the victim was the child's other parent; or who has been convicted of murder, manslaughter, rape, incest, or neglect or battery and the victim was the child's sibling.

Iowa

§600.7; 600 A.8

A person refuses to consent or cannot be located to consent. The parent has signed a release of custody or petition to terminate rights; has abandoned or failed to support the child; is a chronic substance abuser; has committed more than one act of domestic abuse; or has abducted, removed or improperly retained the child.

Kansas

§ 59-2136

The father has neglected or abandoned the child; failed to contact or support the child; is unfit or incapable of consent;

failed to support mother during pregnancy; abandoned the mother; raped the mother; failed to assume parental duties for 2 years. As far as is applicable, the provisions also apply to the mother.

Kentucky

§199.502

A parent has abandoned or failed to support the child; has inflicted serious injury or allowed the child to be sexually abused; has had parental rights to another child terminated.

Louisiana

Ch. Code Art. 1245

A parent with custody is married to the petitioner and the other parent has failed to support, visit or communicate with the child.

Maine

Title 18-A § 9-302

A parent has abandoned the child; fails to assume parental responsibility; whose rights have been terminated. The child is 18 years or older. A putative father who failed to respond to notice or waived right of notice.

Maryland

Fam. Law § 5-312

Child has been out of parent's custody for 1 year and has significant attachment to petitioner; parent has failed to contact or support child; or has been convicted of child abuse.

Massachusetts

Ch. 210 § 3

The child is over 18; the court determines that waiver is in child's best interest; the child has been abandoned or subjected to abuse or neglect, the parent has been convicted of murder or manslaughter and the victim was the other parent or a sibling; the child has been in foster care for 15 of the latest 22 months.

Michigan

MCL § 710.37, 710.43

Putative father denies paternity or interest in custody; fails to provide support. Parental rights have been terminated or relinquished. MCL § 710.51(6) Non-custodial parent has failed for 2 years or more to support or communicate with the child.

Minnesota

§ 259.24 subd. 1

Parent has abandoned the child; whose rights have been terminated; or who lost custody through a court proceeding.

Mississippi

§ 93-17-7

Consent is always needed unless the child is abandoned; the parent is mentally or morally unfit; or parental rights have been terminated.

Missouri

§453.040

A parent's rights have been terminate; whose identity is unknown; who has been found incompetent; who has abandoned or failed to support or care for child.

Montana

§ 42-2-302

An individual whose parental rights have been terminated for unfitness or has waived rights; has been declared incompetent; who has not been married to the mother and denies paternity; or the personal representative of deceased parent's estate.

Nebraska

§43-104, 43-105

A parent has relinquished the child, has abandoned the child for at least 6 months; whose parental rights have been terminated, or is incapable of giving consent.

Nevada

§ 127.090

The parents' parental rights have been terminated.

§ 127.040 A parent has been insane for 2 years and there is proof tht the insanity is incurable.

New Hampshire

§ 170-B; 6

When an unwed father has failed to establish paternity; a parent's rights have been terminated.

New Jersey

§ 9:3-45

Parent has executed a valid surrender whose parental rights have been terminated' has failed to respond to notice; whose child has been made available for adoption in a foreign country; has failed to contact or support the child; or has not acknowledged paternity.

New Mexico

§§ 32A-5-18, 19

A parent's rights have been terminated or have been relinquished to an adoption agency. A biological father of a child conceived by rape or incest; any person who fails to respond to notice; any putative father who fails to register. The parent has left the child without identification or has

failed to contact or support the child.

New York

Dom. Rel. § 115

The parent has failed to visit or contact the child for 6 months; has surrendered the child for adoption; or due to mental illness or retardation is unable to care for child § 111 Parent shows intent to forgo rights, has surrendered the child to an agency, or whose child has a court appointed guardian; is unable to care for the child due to mental illness.

North Carolina

§ 48-2-603

The parent fails to respond to notice if a putative father cannot establish parental rights; rights have been terminated or relinquished; a man denies paternity.

North Dakota

§ 14-15-06

The child has been abandoned; there is no communication or support for 1 year; parental rights have been terminated or relinquished; adulthood of adoptee; parental incompetence.

Ohio

§ 3107.07

The parent fails to contact or provide for the child for 1 year;

the putative father is not the actual father; the parent relinquishes or has parental rights terminated; guardian or custodian withholds consent unreasonably; a parent or guardian is in a foreign country and child is released for adoption pursuant to laws in that country.

Oklahoma

§ 10-7505-4.2

Parental rights have been terminated for 12 months, the parent has failed to support the child; a parent has been convicted of physical or sexual abuse, or is incarcerated; a putative father fails to acknowledge paternity; a parent has a mental illness or deficiency.

Oregon

A parent does not retain custody(§ 109.314); when a parent is mentally ill or deficient or has been imprisoned more than 3 years (§ 109.322); a parent has deserted or neglected the child (§109.324); the mother's husband is found not to be the child's father. (§109.326)

Pennsylvania

23 Pa. §§ 2714,2511

When the adoptee is 18 years or older; the parent of a newborn fails to maintain contact for 4 months; the father of a child conceived through incest or rape; parental rights have

been terminated the parent has failed to perform parental duties; there is repeated and continued abuse or neglect; the parent is the presumptive but not natural father of the child; the child is in the custody of an agency because the whereabouts of the parents are unknown; the child has been removed from the parent for 6 months.

Rhode Island

§ 15-7-7

Parental rights have been terminated; the parent has neglected or abused the child or subjected the child to aggravated circumstances; the parent is deemed unfit due to emotional or mental illness; excessive drug or alcohol abuse; parent has voluntarily or involuntarily placed the child in the care of a licensed agency.

South Carolina

§20-7-1695

Parental rights have been terminated pursuant to statutes listed; parent has executed a relinquishment or has been judged mentally incapable.

South Dakota

§ 25-6-4

If the parent is guilty of adultery or incarcerated; has abandoned the child; is a habitual drinker or mentally incompetent; has been deprived of custody; or has neglected the child.

Tennessee

§ 36-1-113

There is no person qualified to give consent. The parent has abandoned the child, has shown substantial noncompliance with a permanency plan; whose child has been out of the home for 6 months; has committed sever child abuse; been imprisoned for 2 years for conduct against a child; has failed to support, contact or visit the child.

Texas

Fam. Code §161.005, 161.006, 161.007

Parent's inability to care for child due to mental illness, voluntary termination of parental rights; after an abortion where the child survives; a person is convicted of a crime resulting in the birth of child, termination on the grounds of abandonment non-support, endangerment, abuse and neglect.

Utah

§ 78-30-17,23

Parent has been deprived of custody due to cruelty, neglect, desertion or failure to provide has had rights terminated; natural father has failed to establish a relationship with the child, or parent has relinquished child to a licensed agency.

Vermont

Title 15A § 2-402

A person has relinquished parental rights to an agency, or whose rights have been terminated on grounds that they did not exercise parental authority ;who has been convicted of crime or committed an act of violence against child or parent; or is otherwise declared unfit.

Virginia

§ 63.1-220.2, 220.3

When the father has been convicted of rape if parental rights have been terminated; if the putative father cannot be identified, or if known, fails to respond to notice.

Washington

§ 26.33.120

A parent's rights have been terminated in the child's best interest and due to failure to perform parental duties.

West Virginia

§48-4-3

Parental rights have been terminated, a child was abandoned or permanently relinquished; the parent is under disability or incurably insane.

Wisconsin

§ 48-415

Parental rights have been terminated due to failure of parents to assume responsibility; abandonment, continuing parental disability and child abuse; causing child to be conceived as a result of incest or sexual assault, or homicide of a parent.

Wyoming

§ 1-22-110

When parent fails to respond to notice; parental rights have been terminated; parent has abandoned the child or been adjudged guilty of child abuse or neglect, child was conceived as a result of rape or incest for which the father was convicted; parent fails to meet support obligation; a putative father fails to acknowledge paternity.